

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1603 of 1988

To

FIRST APPEAL No. 1611 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

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2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

STATE OF GUJARAT

Versus

PATEL TALSHI RAMJIBHAI

Appearance:

Mr. H.L.Jani, A.G.P. for the State in F.A.Nos.
1603/88 to 1605/88

Mr. M.R.Raval, A.G.P. for the State in F.A.Nos.
1606/88 to 1608/88.

Mr. P.G.Desai, A.G.P. for the State in F.A.No.
1609/88 to 1611/88

MR GM AMIN, advocate for the claimants

Mr.N.S.Shevde and Mr. D.K.Nakrani with MR SHANTILAL
S SHAH advocates for Union of India.

CORAM : MR.JUSTICE J.M.PANCHAL and

Date of decision: 30/03/99

ORAL COMMON JUDGEMENT

(Per : Panchal, J.)

By means of filing these appeals under Section 54 of the Land Acquisition Act, 1894, read with Section 96 of the Code of Civil Procedure, 1908, the State of Gujarat has challenged legality of the common judgment and award dated December 31, 1987, rendered by the learned Assistant Judge, Surendranagar, in Land Reference Cases No. 28/81 to 35/81 and Land Reference Case No.2/83. The lands belonging to the respondents were placed under acquisition pursuant to publication of preliminary notification under Section 4(1) of the Land Acquisition Act, 1894, on June 28, 1973. We may state that Land Reference Case No. 28/81 was treated as the main case and the parties had led common evidence therein. As common questions of fact and law are involved in these appeals, we propose to dispose of them by this common judgment.

2. A proposal to acquire (1) open plots (2) common plots (3) private roads and (4) agricultural lands of village Dudharej, Taluka : Wadhwan, District : Surendranagar for the public purpose of 'Virangam-Okha-Porbandar Broad-guage Conversion Scheme', was received by the State Government. On scrutiny of the said proposal, the State Government was satisfied that open plots, common plots, agricultural lands, etc. of village Dudharej were likely to be needed for the said public purpose. Accordingly, notification under Section 4(1) of the Land Acquisition Act, 1894 ('Act' for short) was issued, which was published in the Government Gazette on June 28, 1973. The lands to be acquired were specified in the said notification. The owners, whose lands were sought to be acquired, were served with notices under Section 4 of the Act. They had filed their objections against the proposed acquisition. After considering their objections, the Land Acquisition Officer had forwarded his report under Section 5A(2) of the Act to the State Government. On consideration of the said report, the State Government was satisfied that agricultural lands as well as non-agricultural lands of village Dudharej, which was specified in the notification published under Section 4(1) of the Act were needed for the public purpose of 'Virangam-Okha-Porbandar Broad-guage Conversion Scheme'. Therefore, declaration under Section 6 of the Act was made which was published in official gazette on May 2, 1974. Interested persons

were thereafter served with notices under Section 9 of the Act for determination of compensation. The claimants appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs.15/- per sq.yard i.e. Rs.17.98 ps per sq.mtr., but, having regard to the materials placed before him, the Land Acquisition Officer, by his award dated July 30, 1980 offered compensation to the claimants at the rate of Rs. 2.50 ps to Rs.5.00 per sq.mtr for agricultural and non-agricultural lands respectively. By the said award, the land owners were also offered compensation at the rate of Rs.1.00 per sq.mtr for private roads and common plots. The claimants were of the opinion that the offer of compensation made by the Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing requiring the Land Acquisition Officer to refer the matters to the Court for the purpose of determination of compensation. Accordingly, references were made to the District court, Surendranagar, which were numbered as Land Reference Cases Nos.28/81 to 35/81 and Land Reference Case No. 2/83. In the reference applications, the claimants pleaded that the lands acquired were very valuable, and having regard to overall development, which had taken place near the acquired lands as well as potentiality of the agricultural lands for building purpose, they were entitled to higher compensation. In view of different nature of the acquired lands, the claimants had claimed different amounts of compensation ranging between Rs.10 and Rs.24 per sq.mtr before the Reference Court. The reference applications were contested by the present appellants vide written statement Exh.7. The reference applications were amended and amended reply was filed by the present appellants at Exh.15. In the reply, it was stated that those claimants, who had not laid any claim in response to service of notices under Section 9 of the Act, were not entitled to any enhanced compensation. It was pleaded that the Land Acquisition Officer had taken into consideration all the relevant factors before making the award and therefore the reference applications should be dismissed. Upon rival assertions made by the parties, necessary issues for determination were framed by the Reference Court at Exh. 8. In order to substantiate the claim advanced in the reference applications, the claimants examined (1) Vajubha Samantsang at Exh.16, (2) Manjulaben Parshotambhai at Exh.17, (3) Kanjibhai Popatbhai at Exh.20, (4) Rasagbhai Kaluji Parmar at Exh.26, (5) Rameshchandra Ghanshyamlal at Exh.27, (6) Govindbhai Shivabhai at Exh.28, (7) Ramji Lalji at Exh.29, (8) Mahant Kalyandas Gomtidasji at Exh.50, and (9) Saraswatidas Gomtidas at Exh.51. On behalf of the State

Government, two witnesses were examined, namely, Valjibhai Dahyabhai Vaghela at Exh.58 and Parshotam Nagji at Exh.85. The claimants had also produced documentary evidence in support of their claim for higher compensation. On appreciation of evidence, the Reference Court held that the compensation offered by the Land Acquisition Officer for open plots, common plots, roads, agricultural lands and non-agricultural lands was inadequate. The Reference Court noticed that the lands under acquisition were very near to the northern boundary of the city of Surendranagar and huge development at the relevant time had taken place on the northern side of city of Surendranagar, with the result, there was high potential value of the lands under acquisition for development of Surendranagar city. Having regard to nature of acquisition, Reference Court was of the opinion that the lands under acquisition should be treated as big homogeneous parcel of the plots consisting of several big and small plots of lands and there was uniform potential value with respect to agricultural lands as well as non-agricultural lands under acquisition. In view of the overall development which had taken place near the acquired lands, Reference Court deduced that it was not necessary to resort to belting method while ascertaining the market value of the acquired lands. It was further held by the Reference Court that the claimants were entitled to same amount of compensation as may be determined for non-agricultural lands for common plots and roads also. After taking into consideration documentary evidence produced by the parties, Reference Court held that sale instances produced by the claimants in respect of Survey Nos. 663, 719, 580, 633 and 606 were relevant as well as comparable for the purpose of ascertaining the market value of the acquired lands. In ultimate decision, the Reference Court has held that the claimants are entitled to compensation at the rate of Rs.12/- per sq.mtr by the impugned common award, giving rise to the present appeals. We may state that the Reference Court has also granted statutory benefits available to the claimants under sections 23(1-A) and 34 of the Act as well as interest on amounts payable under sections 23(1-A) and 23(2) of the Act.

3. The learned Government Counsel submitted that the sale instances relating to Survey Nos. 663, 580, 719, 633 and 606 were not proved at all and, therefore, the same could not have been relied upon by the Reference Court while ascertaining market value of the acquired lands. It was submitted that development in the area nearby the acquired lands had taken place after the acquisition of the lands in the present case and,

therefore, the said development could not have been made basis for the purpose of determining market value of the acquired lands. The learned Counsel vehemently submitted that there cannot be uniform potential value of the lands irrespective of fact whether the land acquired is agricultural land or non-agricultural land and, therefore, uniform determination of market value for agricultural as well as non-agricultural lands made by the Reference Court should be set aside. It was pleaded that the sale instances referred to by the witnesses of the State Government ought to have been relied upon for the purpose of determining market value of the acquired lands and the Reference Court was not justified in not considering the same at all. Learned Counsel vehemently contended that the Land Acquisition Officer had made his award on July 30, 1980 and, therefore, additional amount of compensation as envisaged under section 23(1-A) of the Act should not have been directed to be paid to the claimants. It was pleaded that direction to pay interest on the amounts payable to the claimants under sections 23(1-A) and 23(2) of the Act should not have been given in view of the judgment of the Supreme Court rendered in the case of State of Maharashtra v. Maharau Srawan Hatkar, Judgment Today, 1995(2) SC 583. The learned Counsel claimed that belting method ought to have been resorted to while determining market value of the acquired lands. What was stressed was that no cogent evidence was led by the claimants to establish that they were entitled to compensation at the rate of Rs.12/- per sq.mtr and, therefore, the impugned common award should be set aside.

4. Mr. G.M. Amin, learned counsel for the claimants, submitted that similar lands of village Dhudharej were acquired pursuant to preliminary notification under section 4(1) of the Act on June 28, 1973 for the same public purpose and, therefore, the award made by the Reference Court in Land Reference Cases No. 2/84 to 22/84 and 37/84 as modified by the High Court in First Appeals No. 1555/88 to 1576/88 should be made basis for awarding compensation to the claimants. Learned Counsel for the claimants submitted that the possession of the acquired lands was taken on December 10, 1973 and, therefore, direction to pay interest at the rate of 9% per annum for the first year from December 10, 1973 and thereafter at the rate of 15% per annum till realisation of the amount ought to have been given by the Reference Court. The learned Counsel pleaded that a just award has been passed by the Reference Court awarding compensation to the claimants and, therefore, State appeals should be dismissed.

5. We have heard the learned counsel for the parties at length and we have also gone through the record of the case. Normally, methods of valuation are: (1) opinion of experts: (2) the prices paid within a reasonable time in bona fide transactions of purchase or sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages or award of the Reference Court as may be modified by the Appellate Court in respect of similar lands of the same village, which has become final between the parties, and (3) a number of years' purchase of the actual or immediately prospective profits of the lands acquired. Normally, the method of capitalising the actual or immediately prospective profits or the rent of a number of years' purchase is not resorted to if there is evidence of comparable sales or other evidence for computation of the market value. In this case, the Reference Court has referred to sale instances for the purpose of ascertaining the market value of the acquired lands. Those sale instances are tabulated in paragraph 28 of the judgment. However, the sale instances in respect of Survey Nos. 663 paiki new number which is 719, 508 paiki, 633 paiki and 606 are not proved at all and, therefore, those sale instances could not have been taken into consideration by the Reference Court for the purpose of ascertaining the market value of the acquired lands. The best evidence of value of property is sale transaction in respect of acquired lands to which the claimant may be a party, failing which the sale transaction relating to the neighbouring land in the vicinity of acquired lands can be relied on. When the sale deed relating to the neighbouring land in the vicinity of acquired lands is sought to be relied upon, the features which require to be presented before the Court are; (i) It must be within a reasonable time of the date of notification, (ii) It must be bonafide transaction, (iii) It should be a sale of land similar to the land acquired or land adjacent to the land acquired, and (iv) It should possess similar advantageous features. These are relevant features which should be taken into consideration to prove the market value of the acquired land as on the date of the notification published under section 4(1) of the Act. These features can be established by examining either vendor, or vendee and if they are not available, by examining the scribe of the document. In the present case, neither the vendor, nor the vendee, nor the scribe of any of the deeds was examined by the claimants to present relevant features before Court and, therefore, those sale instances could not have been relied upon by the Reference Court while determining the market value of the acquired lands. In

the case of State of Gujarat & Ors. v. Rama Rana & Ors. 1997(3) G.L.R. 1954, the Supreme Court has emphasised that Court has statutory duty to the society to subject evidence on record to a great scrutiny and to award a just compensation to the claimants in cases of compulsory acquisition of lands. We may state that other lands of village Dhudharej were placed under acquisition pursuant to publication of preliminary notification under section 4(1) of the Act on June 28, 1973 for the same public purpose. Therein, the Land Acquisition Officer by his award dated May 2, 1983 had offered compensation to the claimants at the rate of Rs. 2.50 ps to Rs. 5.00 per sq.mt. for agricultural lands and non-agricultural lands respectively. Feeling dissatisfied with the said offer, the claimants in those cases had sought references and Reference Court in Land Acquisition Reference Cases No.2/84 to 22/84 and 37/84 had by judgment and award dated December 31, 1987 awarded compensation at the rate of Rs. 12/- per sq.mt. Feeling aggrieved by the said judgment, First Appeals No. 1555/88 to 1576/88 were preferred by the State Government and the Division Bench vide judgment dated March 23, 1999 has held that the claimants were entitled to compensation at the rate of Rs. 12/- per sq.mt. for non-agricultural lands and Rs. 9/- per sq.mt. for agricultural lands. The award made by the Court is at least relevant material and would be in nature of admission with regard to the valuation of the land on behalf of the State and if the lands involved in the award are comparable and in the reasonable proximity of the acquired lands, the rates found in the said award would be a reliable material to afford a basis to work upon for determination of the compensation for similarly acquired lands on a later date. The award, therefore, cannot be dismissed as inadmissible for the purpose of determination of compensation. A judgment of a Court in land acquisition case determining the market value of the land in the vicinity of the acquired lands even though inter partes can be relied upon either as an instance or one from which the market value of the acquired lands can be deduced or inferred. The fact that other lands from this very village were placed under acquisition pursuant to publication of preliminary notification under section 4(1) of the Act on June 28, 1973, is not in dispute. It is not in dispute that in Land Acquisition Reference Cases No. 2/84 to 22/84 and 37/84, the Reference Court by judgment and award dated December 31, 1987 had awarded compensation to the claimants at the rate of Rs. 12/per sq.mt. Further it is an admitted position that in First Appeals No. 1555/88 to 1576/88 which were directed against the judgment and award dated December 31, 1987 rendered by

the Reference Court in Land Acquisition Reference Cases No. 2/84 to 22/84 and 37/84, the High Court has modified the said award and held that the claimants of those cases were entitled to compensation at the rate of Rs. 12/- per sq.mt. for non-agricultural lands and Rs. 9/- per sq.mt. for agricultural lands. The evidence of nine witnesses examined on behalf of the claimants establishes that the lands acquired in the present case were similar in all respects to the lands in respect of which modified award was passed by the High Court. Though the claimants have failed to prove the sale instances to enable the Court to determine market value of the acquired lands, the previous award as modified by the High Court can be taken into consideration advantageously for the purpose of determining market value of the acquired lands. We may state that the High Court in those matters has determined market value of similarly situated lands on the basis of sale deeds which were proved in those cases. Under the circumstances, we hold that the claim advanced by the claimants is not liable to be defeated on the ground that they did not adduce reliable evidence to enable the Court to determine market value of the acquired lands.

6. In our opinion, the Reference Court was not justified in holding that there is uniform potential value with respect to non-agricultural land and agricultural land under acquisition and, therefore, market value of both the kinds of lands should be uniform as well as identical. It hardly needs to be emphasised that the agricultural land is subject to several restrictions before it could be put to non-agricultural use. For the purpose of developing agricultural land, one is required to incur expenditure for providing enough space for roads, sewers, drain, layout etc. Under the circumstances, agricultural lands and non-agricultural lands could not have been assessed on the same footing and appropriate deduction will have to be made while ascertaining market value of the acquired agricultural lands. The Supreme Court in several reported decisions has laid down that the Court should deduct reasonable amount from the price of non-agricultural land while ascertaining market value of the agricultural land. Having regard to the facts and circumstances of the case, we are of the opinion that interest of justice would be served if appropriate deduction is made from the price of non-agricultural lands as indicated in the previous award. Accordingly, we hold that market value of the agricultural land acquired in the present case was Rs. 9/- per sq.mt. as on the relevant date.

7. The submission that belting method ought to have

been adopted has no substance and deserves to be rejected. We may state that before the acquisition proceedings were initiated, there was an overall development near the acquired lands and several structures had come up adjacent to the acquired lands. The evidence of witnesses examined by the claimants indicates that the development in the area had started since 1954 and there was pressure on the lands in Surendranagar city. It was not brought to the notice of the Court that the lands acquired were abutting on any National Highway or State Highway, though some of the lands acquired were near the State Highway. So far as the belting method is concerned, the Supreme Court in Land Acquisition Officer, Revenue Divisional Officer, Chittor v. L.Kamalamma (Smt.) Dead by Lrs. and others, [(1998) 2 Supreme Court Cases 385] laid down as under:

"When a land is acquired which has the potentiality of being developed into an urban land, merely because some portion of it abuts the main road, higher rate of compensation should be paid while in respect of the lands on the interior side it should be at lower rate may not stand to reason because when sites are formed those abutting the main road may have its advantages as well as disadvantages, Many a discerning customer may prefer to stay in the interior and far away from the main road and may be willing to pay a reasonably higher price for that site. One cannot rely on the mere possibility so as to indulge in a meticulous exercise of classification of the land as was done by the Land Acquisition Officer when the entire land was acquired in one block and therefore classification of the same into different categories does not stand to reason."

In view of the abovereferred to principles laid down by the Supreme Court, we are of the opinion that it is not necessary to resort to belting method while determining market value of the acquired lands.

In this case, award was made by the Land Acquisition Officer on July 30, 1980 and, therefore, direction could not have been given by the Reference Court to the appellant to pay additional amount of compensation as envisaged under section 23(1-A) of the Act. Therefore, the said direction will have to be set aside. Again, the Supreme Court in the case of State of Maharashtra vs. Maharau Srawan Hatkar (Supra) has ruled that additional amount as envisaged under sub-sections (1-A) & (2) of Section 23 are not part of the components

of compensation awarded under section 23(1) of the Act and direction to pay interest on those amounts cannot be granted. Therefore, direction given by the Reference Court to pay interest on the amount payable to the claimants under section 23(2) of the Act also will have to be set aside. In the present case, possession of the lands acquired was taken on December 10, 1973 and there is no dispute between the parties regarding date on which possession of the acquired lands was taken from the land owners. Under the circumstances, Reference Court should have directed the appellant to pay interest at the rate of 9% per annum from December 10, 1973 for a period of one year and thereafter at the rate of 15% per annum till the realisation of the amount. The direction given by the Reference Court to the appellant to pay interest at the rate of 9% per annum from 1.1.1988 for one year and thereafter to pay interest at the rate of 15% per annum till realisation of the amount will have to be set aside.

In view of our finding that previous award of the Court can be relied upon for the purpose of ascertaining market value of the acquired lands in the present case, we hold that the market value of the acquired non-agricultural land was Rs.12.00 per sq.mtr. on the relevant date as well as market value of the acquired agricultural land was Rs.9/- per sq.mt. On the basis of this finding, the appeals filed by the State Government will have to be partly allowed.

For the foregoing reasons, all the appeals filed by the appellants are partly allowed. It is held that the market value of the acquired non-agricultural lands on the relevant date was Rs.12.00 per sq.mtr., whereas the market value of the acquired agricultural lands on the relevant date was Rs.9.00 per sq.mtr. The claimants shall not be entitled to any amount envisaged under section 23(1-A) of the Act, nor to the interest on the amount payable to them under section 23(2) of the Act. The claimants shall be entitled to interest at the rate of 9% per annum from December 10, 1973 for a period of one year and thereafter at the rate of 15% till realisation of the amount. Rest of the directions given by the Reference Court with regard to payment of solatium, etc. are not disturbed and are hereby upheld. There shall be no order as to costs. Office is directed to draw decree in terms of this judgment.

(patel)